
(2000) 09 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 1069 of 2000

Chandrakant Ghuse

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-09-2000

Acts Referred:

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 2(49), 2(7), 55, 55(5)

Citation : (2001) 2 BomCR 528 : (2000) 4 MhLj 435

Hon'ble Judges : S.K. Shah, J; D.D. Sinha, J

Bench : Division Bench

Advocate : K.H. Deshpande, C, for the Appellant; B.R. Gavai, G.P., for the Respondent

Judgement

D.D. Sinha, J.—Heard Shri K.H. Deshpande, learned Senior Counsel for the petitioner and Shri B.R. Gavai, learned Government Pleader for respondents.

2. Rule, made returnable forthwith and heard finally by consent of the parties.

3. The petitioner is challenging the action of the respondent No. 3, in holding that no confidence motion against the petitioner (President of the Municipal Council) was passed on 22-02-2000, being contrary to the Rules and Regulations of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.

4. Shri K.H. Deshpande, learned Senior Counsel for the petitioner contended that the petitioner was the elected President of the Municipal Council, Hinganghat. The Municipal Council is consisted of 33 members, out of which 30 members are elected from the respective wards and 3 members are nominated. The learned Senior Counsel further contended that a special meeting was held on 22-02-2000 to take a decision on the no confidence motion moved against the petitioner-President. It is submitted that as per section 9 of the Act, the Council shall consist of Councillors elected at ward elections, by direct elections as well as

such number of Councillors to be nominated by the Council as provided in sub-clause (b) of section 9(1) of the Act. Similarly, sub-section (7) of section 2 of the Act contemplates that "Councillor" means a person duly elected as a member of the Council and includes the nominated Councillor. Hence the word "Councillor" does not mean only the duly elected members from the respective wards, but the word "Councillor" also takes into ambit the nominated Councillors of the Council though they do not have the right to vote at any meeting of the Council and are not eligible to get elected as President of the Council or a Chairman of any Committee of the Council.

5. Shri Deshpande, learned Senior Counsel further contended that sub-section (1) of section 55 provides the method for removal of the President of the Municipal Council by the Councillors. It is submitted that a President shall cease to be President of the Municipal Council, if the Council by resolution passed by a majority of not less than two-thirds of the total number of Councillors at a special meeting so decides.

6. It is canvassed before us by the learned Senior Counsel that in view of section 9 as well as sub-section (7) of section 2 of the Act, the composition of the Municipal Council is consisted of both the categories of members i.e. elected as well as nominated Councillors and for passing the resolution of no confidence motion, the majority required under sub-section (1) of section 55 of the Act is two-third of the total number of Councillors, which means the total strength of the Municipal Council, irrespective of whether they are elected or nominated. It is submitted that in the instant case, it is not in dispute that the Municipal Council consists of 30 elected Councillors and 3 nominated councillors and, thus, the total Councillors are 33 in number and for passing the resolution of no confidence motion, the requisite majority of two-third of the total number of Councillors is necessary i.e. 22 Councillors. However, in the instant case, the total number of Councillors, those who have voted in favour of no confidence motion are 20 only, which is less than two-third of the total number of Councillors and, therefore, said Resolution cannot be said to be legally passed against the petitioner and same cannot be sustained.

7. Shri Deshpande, the learned Senior Counsel also contended that even otherwise, the nominated or co-opted Councillors cannot be segregated from the composition of the Council merely on the ground that they cannot be construed as elected Councillors in view of sub-section (49) of section 2. It is submitted that the expression "Election" means the selection of a person by vote or otherwise. The learned Senior Counsel tried to substantiate that when a person is nominated by way of selection on the basis of a given criteria from amongst several persons, then in the broader sense, he is elected to the office. It is, further, submitted that the nominated Councillor in a broader sense can be considered to be elected to the office and, therefore, cannot be excluded from the definition of "total number of Councillors" provided under sub-section (49) of section 2 of the Act.

8. Shri Deshpande, the learned Senior Counsel further submitted that the relevant rules provide for procedure of election to be undertaken even in respect of nominated Councillors and, therefore, status of the nominated Councillor does not differ in any aspect than that of elected Councillor who is directly elected from the ward and, therefore, while considering the aspect of "total number of Councillors", the number of the nominated Councillors is required to be taken into consideration and majority of two-thirds out of such "total number of councillors" is necessary in view of sub-section (1) of section 55 for validly passing the motion of no confidence against the President. Shri Deshpande, further contended that in the instant case the resolution is not passed by two-third majority of the total number of Councillors and hence motion cannot be sustained.

9. In order to substantiate the above referred contentions, reliance is placed by the learned Senior Counsel on the judgments of the Apex Court in the case of *Raees Ahmad v. State of U.P. and others*, reported in AIR 2000 S.C. 583 and in the case of *Dinesh Prasad Yadav Vs. State of Bihar and Others*, .

10. Shri Gavai, the learned Government Pleader appearing for the respondents, supported the impugned action of respondent No. 3. It is contended that the expression used in sub-section (7) of section 2 of the Act i.e. "total number of Councillors" can only mean total number of Councillors (other than co-opted or nominated Councillors) who are entitled to sit and vote at the relevant time. It is submitted that if the interpretation suggested by the petitioner in this regard is accepted, then the provisions of the Act will become unworkable. It is canvassed before us that section 9 of the Act though include the nominated members in the composition of the Council, still they are treated differently and are also do not enjoy the same power or right as enjoyed by the directly elected Councillors, which is evident from sub-section (7) of section 2 of the Act. The definition of "Councillor" provided in sub-section (7) of section 2 of the Act means, a person duly elected as a member of the Council and not otherwise. However, by virtue of the later part of this sub-section, the nominated member is sought to be included in the definition of "Councillor" who shall not have the right to vote at any meeting of the Council and Committees of the Council and shall not have a right to get elected as President of the Council or Chairman of any Committee of the Council. It is, therefore, contended that the "nominated Councillors" is a category which is different and distinct from the category of "elected Councillors".

11. It is further contended that as per the requirement of sub-section (1) of section 55, in order to pass the resolution of no confidence motion, the majority of two-thirds of the total number of Councillors is necessary and in view of definition of "total number of Councillors" as provided in sub-section (49) of section 2 means the total number of elected (Councillors) of that Council. It is, therefore, contended that while considering the "total number of Councillors" for the purpose of counting two-third majority, it is not necessary to include the number of nominated Councillors and the two-third majority of the total number

of Councillors is required to be counted on the basis of the number of directly elected councillors from the respective wards. In the instant case, the total number of elected Councillors are 30 and two-third majority comes to 20 and, therefore, the no confidence motion is validly passed.

12. The learned Government Pleader further contended that sub-section (49) of section 2 of the Act, prior to the 1994 amendment as then existed, reads thus :

"Section 2(49). Total Number of Councillors in relation to a Council means the total number of the elected and the co-opted and nominated Councillors, if any, of that Council."

It is submitted that as per the above definition of "total number of Councillors", in relation to the Council, included number of elected and co-opted as well as nominated Councillors. However, after amendment to this sub-section, the definition only include total number of elected (Councillors) of that Council. The learned Government Pleader, therefore, contended that in view of this specific amendment, the other categories of members such as co-opted and nominated are deleted from the definition of "total number of Councillors" and, therefore, the members belonging to such categories cannot be included in the definition of "total number of Councillors". The learned Government Pleader, therefore, contended that the action on the part of the respondents is just, proper and is sustainable in law.

13. We have given our anxious consideration to various legal contentions raised by the learned Counsel for respective parties and carefully perused the relevant provisions relied upon by them.

14. The procedure for removal of the President by Councillors is provided in section 55 of the Act. The relevant sub-sections, for the purpose of controversy in question, are sub-sections (1) and (5) of section 55 of the Act. Sub-section (1) requires the majority of not less than two-thirds of "total number of Councillors" to pass the resolution of no confidence against the President. Sub-section (5) provides that the nominated Councillors present at any meeting mentioned in sub-section (4) shall have no right to vote on any resolution relating to the removal of the President. Sub-section (49) of section 2 provides the definition of "total number of Councillors", which in relation to the Council, means the total number of elected (Councillors) of the Council. It is, therefore, necessary for us to consider whether the nominated Councillors can come within the ambit of "total number of Councillors" as defined under sub-section (49) of section 2 of the Act, two-third of which is necessary to pass the resolution of no confidence as provided in sub-section (1) of section 55 of the Act.

15. Section 9 of the Act no doubt includes the nominated Councillors in the composition of the Council. However, the same is distinct from the class of Councillors elected at ward elections. The composition of Council provided u/s 9 of the Act right from the inception inherently creates two distinct classes of Councillors such as Councillors elected directly from the wards and the number of

Councillors nominated by the Council and, therefore, the intention of the Legislature, in this regard, is clear that they are required to be considered differently because of the different process of election/nomination through which they assume their respective offices. The provisions of sub-section (7) of section 2 further makes this aspect more clear. The definition of "Councillor", as provided in this sub-section (7) of section 2 of the Act, means a person duly elected as a member of the Council. However, the later part of the sub-section also includes the nominated Councillors, who shall not have the right to vote at any meeting of the Council and Committees of the Council and shall also not have a right to get elected as President of the Council or a Chairman of any of the Committees of the Council.

16. The above referred definition of "Councillor" undoubtedly creates two different classes of Councillors-(1) persons directly elected; and (2) the nominated Councillors, having different rights. If the Legislature intended to treat both these classes at par with each other for the purpose of including them in the definition of "total number of Councillors" and further intended not to segregate the elected Councillors from that of nominated Councillors, the word "includes" in sub-section (7) of section 2 would not have been there. In that case, the construction of the sentence would have been, "Councillor" means a person duly elected or nominated as member of the Council. It is, therefore, by virtue of their distinct identities they are necessarily come within different classes of Councillors though both are included in the composition of the Council.

Section 55 of the Act reads thus :

(1) A President shall cease to be President, if the Council by resolution passed by a majority of not less than two-thirds of the total number of Councillors at a special meeting so decides.

(2) The requisition for such special meeting shall be signed by not less than one-half of the total number of Councillors and shall be sent to the Collector.

(Provided that any co-opted Councillor co-opted on the Council before 31st May, 1994 shall not have the right to sign the requisition for the special meeting and shall also have no right to vote at such special meeting).

(3) The Collector shall, within ten days of the receipt of a requisition under sub-section (2) convene a special meeting of the Council;

Provided that, when the Collector convenes a special meeting, he shall give intimation thereof to the President.

(4) A meeting to consider a resolution under sub-section (1) shall be presided over by the Collector or any other officer authorised by him in this behalf, but the Collector or such other officer shall have no right to vote.

(5) The (nominated) Councillors present at any meeting mention in sub-section (4) shall have no right to vote on any resolution relating to the removal of the

President.

(6) If the resolution, seeking the removal of the President is not moved, or as the case may be rejected, in the special meeting convened for the purpose under sub-section (3), no fresh resolution seeking removal of the President who,--

(a) is elected before the 6th December, 1994, shall be brought before the Council within a period of one year from the date of the special meeting convened under sub-section (3) ;

(b) is elected on or after the 6th December, 1994, shall be brought before the Council during the tenure of that President.

17. From the above provisions, it is clear that the President shall cease to be President if the Council by resolution passed by a majority of two-thirds of the total number of Councillors (excluding nominated Councillors) at a special meeting so decides.

18. From the phraseology of section 55 of the Act, it can have two meanings. It would mean actual number of Councillors at a given time, who are entitled to sit and vote; and it could also mean that "total number of Councillors" means those who are entitled to sit and vote and not the total strength of the Councillors which includes nominated Councillors, who admittedly, in view of sub-section (5) of section 55, have no right to vote at any resolution relating to the removal of the President.

19. In our opinion, therefore, in view of the scheme of the Act, the phrase "total number of Councillors" as used in sub-section (1) of section 55 of the Act as well as the definition of "total number of Councillors" given in sub-section (49) of section 2 would only mean, the total number of Councillors, who are entitled to vote and sit at the relevant time.

20. The controversy, in this regard, in our opinion, is concluded by the Full Bench decision of this Court in the case of Ashok Maniklal Harkut Vs. The Collector of Amravati and Another, .

21. As far as the ratio laid down by the Apex Court in the case of Raees Ahmad v. State of U.P. and others, reported in AIR 2000 S.C. 583 is concerned, there is a specific provision in the U.P. Municipalities Act, 1916 by way of section 9(D) which deals with the composition of the Municipality and states that it shall consist of a President, elected members, ex-officio members and nominated members. It is, therefore, clear that in U.P. Municipalities Act, 1916, it is specifically provided under the said statute that the nominated members are the part of the composition of the Municipalities and, therefore, it was held by the Apex Court that:

"..... on a plain construction of the statute the number of the nominated members has to be taken into account in determining whether or not a motion of no-confidence against the President has been carried".

However, in the instant case, as per the definition of "total number of Councillors" provided in sub-section (49) of section 2 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, the nominated members are excluded from the definition of "total number of Councillors" and means only the total number of elected Councillors of that Council and, therefore, we are afraid, that the ratio laid down by the Apex Court, in the context of the specific provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, may not be of any help to the petitioner.

22. The contention raised by Shri Deshpande, learned Senior Counsel, on the basis of the another judgment of the Apex Court in the case of Dinesh Prasad Yadav v. State of Bihar and others, reported in 1995(1) S.C.C. 340, that a person though nominated by way of selection can be considered in the broader sense elected to the office, also may not support the petitioner in view of the provisions of sub-section (49) of section 2 of the Act. Sub-section (49) of section 2 of the Act, before the 1994 amendment, which is quoted hereinabove, has included in the definition of "total number of Councillors" all the categories of Councillors i.e. elected, co-opted and nominated Councillors. However, after the 1994 amendment to this sub-section (49) of section 2, the Legislature intentionally excluded the category of co-opted Councillors and nominated Councillors from the definition of "total number of Councillors" and, therefore, if the argument of the learned Senior Counsel is accepted, then the nominated Councillors will have to be included in the definition of "total number of Councillors" which will revive the position existed prior to 1994 amendment to sub-section (49) of section 2 of the Act and will defeat the intention of the Legislature and the object of the Amended Act, 1994. Therefore, in our opinion, the contentions of the learned Senior Counsel cannot be accepted and the ratio laid down by the Apex Court, in the facts and circumstances of the case, as well as in the context of the relevant provisions of the Act, is of no help to the petitioner.

23. For the reasons stated hereinabove, the resolution of no confidence dated 22-02-2000, in our opinion, is validly passed by the majority of two-third of the total number of Councillors as provided in sub-section (1) of section 55 of the Act. The action of the respondents, therefore, is sustainable in law.

24. In the circumstances, petition is dismissed. Interim order, if any, stands vacated. Rule stands discharged with no order as to costs.